

INTER-COUNTRY ADOPTION OF CHILD AND ROLE OF INDIAN DIPLOMATIC MISSIONS

Dr. Vikas Bhatnagar

(Assistant Professor, Marathwada Mitra Mandal's Shankarrao Chavan Law College,
Pune)

Adoption is legal process under which responsibility of child transferred from the biological parents to the adoptive parents. In Hindu law there a clear provision of adoption under Hindu adoption and Maintenance act 1956 which is applicable to Hindus, Sikhs, Jain and Buddhist, but on that issue other personal law like Muslim law and Christian law are silent. it doesn't meant mean that they don't have opportunity to adopt a child, provisions are mention in Juvenile Justice act. Central Adoption Resource Authority (CARA) is a statutory body of Ministry of Women & Child Development, Government of India. It functions as the nodal body for adoption of Indian children and is mandated to monitor and regulate in-country and inter-country adoptions. CARA is designated as the Central Authority to deal with inter-country adoptions in accordance with the provisions of The Hague Convention on Inter-Country Adoption, 1993, ratified by Government of India in 2003. CARA primarily deals with adoption of orphan, abandoned and surrendered children through its associated /recognized adoption agencies. The main role of the Diplomatic mission is to create a harmony between state and protect the interest of citizens residing in sending state thus Diplomatic mission is

also responsible to monitor the process of adoption of an Indian child, adopted by the foreigners or in case of Inter country adoption.

WHAT IS ADOPTION

Adoption is a legal process in which the rights and responsibilities of a child are transferred from biological parents to the adoptive parents. The sole objective of adoption is welfare of the child. After adoption a new bond is formed that is between the adoptive parents and the adopted child so it is very important to consider all the factors before adoption which may affect the child. The biological parents will have no rights on the child after the adoption process is complete.

Under Section 2 (2) of JJ Act- "adoption" means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child.

Thus, Adoption is the social, emotional, and legal process in which children who will not be raised by their birth parents become full and permanent legal members of another family while maintaining genetic and psychological connections to their birth family. Adoption has many facets and touches people in different ways—depending on their role and perspective.

Adoption involves an adult couple or a single adult adopting and raising a child who is no longer in the custody of either of their birth parents (biological parents), such as in cases where they have died or are otherwise unable to care for the child.

Under the process of adoption three things are involved

- A. Biological Parents-** a parent who has conceived (biological mother) or sired (biological father) rather than adopted a child and whose genes are therefore transmitted to the child.
- B. Adoptive Parents-** a person who adopts a child and brings it up as their own.
- C. Adopted children-** An adopted child has been legally taken by another family to be taken care of as their own child.

ADOPTION IN INDIA

In India there are many religion and regarding adoption their practices are different. In Hindus Adoption was permitted and considered as a pious obligation. After Implementation of Hindu Marriage act 1955 this provision is applicable to Hindus, Sikhs, Jains and Buddhist because as per the section 2(b) all are considered as Hindu. Under Muslims and Christians personal law there was no specific provision of adoption. After implementation of Juvenile Justice act 2015 Child Adoption Regulation 2017 now adoption is legalised in Muslims, Christians and Parsis.

Other than the provisions of personal law there is need to analyze some data. A report has been recently tabled on "Review of Guardianship and Adoption Laws" in Parliament by the Parliamentary Standing Committee on Personnel, Public Grievances and Law and Justice.

The United Nations Children's Fund (UNICEF) estimates that 2.96 crore children in India are orphaned or abandoned. The Ministry of Women and Child Development

said in its annual report for 2020-21 that 2.56 lakh children were residing in the country's 7,164 childcare institutions (CCIs). All these data prove the parity in the number of adoptions taking place in India and the number of abandoned children.

A. Why adoption

- In order to overcome infertility.
- To become parents
- To assist a needy child.
- To avoid difficulties during pregnancy.
- To avoid the transmission of genetic abnormalities or diseases.
- Concern about children.
- To keep population increase in check.

B. Fundamental principles governing adoption¹.- The following fundamental principles shall govern adoptions of children from India, namely:-

- (a) The child's best interests shall be of paramount consideration, while processing any adoption placement;
- (b) Preference shall be given to place the child in adoption with Indian citizens and with due regard to the principle of placement of the child in his own socio-cultural environment, as far as possible;

- (c) All adoptions shall be registered on Child Adoption Resource Information and Guidance System and the confidentiality of the same shall be maintained by the Authority.

C. The Adoption process in India

- The Hindu Adoption and Maintenance Act (HAMA), enacted in 1956, applies to Hindus, Buddhists, Jains, and Sikhs. The adoption is irrevocable under this statute, and it grants the child complete status as a natural child born to the family, it also gives the right to inherit the property.
- The Guardian and Wards Act of 1890, governs adoption for Muslims, Parsis, Christians, and Jews. According to the GAWA, the connection formed upon adoption is merely that of guardian and ward. Adoption under GAWA does not bestow child status on the adopted child; this differs from HAMA.
- The 2015 Juvenile Justice (Care and Protection of Children) Act was enacted to replace the Juvenile Justice (Care and Protection of Children) Act of 2000. It is applicable to all Indian citizens. It makes it possible to adopt two children of the same gender. It bestows the status of parents and kids rather than guardians and wards. It also grants the adopted child the same rights as the biological child. It, in particular, offers a complete framework for domestic and international adoption of orphans, abandoned children, and surrendered children.

D. Who is eligible for adoption?

- i. **Child eligible for adoption².**- The following shall be eligible for adoption, namely:- (a) any orphan or abandoned or surrendered child, declared legally free for adoption by the Child Welfare Committee; (b) a child of a relative defined under sub-section (52) of section 2 of the Act; (c) child or children of spouse from earlier marriage, surrendered by the biological parent(s) for adoption by the step-parent.
- ii. **Who can adopt**
As per the Adoption Regulations 2017 and as per the Juvenile Justice (Care and Protection of Children) Act, 2015, issued by the Ministry of Women and Child Development:
- iii. **Eligibility criteria for prospective adoptive parents.- 3**
 - (1) The prospective adoptive parents shall be physically, mentally and emotionally stable, financially capable and shall not have any life threatening medical condition.
 - (2) Any prospective adoptive parents, irrespective of his marital status and whether or not he has biological son or daughter, can adopt a child subject to following, namely: -
 - (a) the consent of both the spouses for the adoption shall be required, in case of a married couple;
 - (b) a single female can adopt a child of any gender;
 - (c) a single male shall not be eligible to adopt a girl child;

- (3) No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship.
- (4) The age of prospective adoptive parents, as on the date of registration, shall be counted for deciding the eligibility and the eligibility of prospective adoptive parents to apply for children of different age groups shall be as under:-
 Age of the child Maximum composite age of prospective adoptive parents (couple) Maximum age of single prospective adoptive parent
 Upto 4 years 90 years 45 years Above 4 and up to 8 years
 100 years 50 years Above 8 and upto 18 years 110 years 55 years

ABOUT CARA

Under Section 68 of the JJ Act Central Adoption Resource Authority (C.A.R.A) is a statutory body of Ministry of Women & Child Development, Government of India. It functions as the nodal body for adoption of Indian children and is mandated to monitor and regulate in-country and inter-country adoptions. CARA is designated as the Central Authority to deal with inter-country adoptions in accordance with the provisions of the Hague Convention on Inter-country Adoption, 1993⁴ ratified by Government of India in 2003. CARA primarily deals with adoption of orphan, abandoned and surrendered children through its associated /recognized adoption agencies.

- In India, the Central Adoption Resource Authority (CARA) is a statutory entity of the WCD (Women and Child Development) ministry that serves as

the nodal agency and is responsible for monitoring and regulating in-country and inter-country adoptions.

- CARA regulates the adoption of orphaned (parents have died), abandoned (parents have deserted), and surrendered (parents have legally given up custody) children through its affiliated or recognized agencies.
- **2021 Adoption (First Amendment) Regulations:** It modifies the 2017 Adoption Regulations. The revision was notified in accordance with relevant provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016), and it modifies the Adoption Regulations, 2017.
- The recently passed Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, aims to tighten and streamline rules for child protection. It specifies that, rather than the court, such adoption orders shall be issued by the District Magistrate (including the Additional District Magistrate).
- Additionally, India adopted the UNCRC (United Nations Convention on the Rights of the Child) in 1992, and the Hague Convention on Inter-country Adoption in 1993, in 2003.
- CARA maintains a database of children and registration of prospective parents on a centralized Child Adoption Resource Information and Guidance System (CARINGS).

Functions of CARA

The Authority shall perform the following functions, in addition to the functions specified in section 68 (1) of the Act, namely: -

1. Monitor and regulate the procedure for in-country adoption;
2. Receive applications of a Non-Resident Indian or Overseas Citizens of India or a foreigner living abroad through authorised adoption agency or Central Authority or the Government department or the Indian diplomatic mission concerned and process the same in terms of section 59 (5) of the Act;
3. Receive and process applications received from a foreigner or an Overseas Citizen of India residing in India for one year or more, and who is interested in adopting a child from India in terms of sub-section (12) of section 59 of the Act;
4. Issue No Objection Certificate in all cases of inter-country adoptions;
5. Issue Conformity Certificate in the inter-country adoption cases under Article 23 of the Hague Adoption Convention in respect of inter-country adoption;
6. Intimate the immigration authorities of India and the receiving country of the child about the inter-country adoption cases;

7. Provide support and guidance to State Adoption Resource Agencies, District Child Protection Units, Specialised Adoption Agencies and other stakeholders of adoption in related matters, through trainings, workshops, exposure visits, consultations, conferences, seminars and other capacity building programs;
8. Coordinate with State Governments or the State Adoption Resource Agencies and advise them in adoption related matters;
9. Maintain a comprehensive centralised database relating to children and prospective adoptive parents for the purpose of adoption in Child Adoption Resource Information and Guidance System;
10. Maintain a confidential centralised database relating to children placed in adoption and adoptive parents in the Child Adoption Resource Information and Guidance System;
11. Carry out advocacy, awareness and information, education and communication activities for promoting adoption and other non-institutional child care services either by itself or through its associated bodies;
12. Enter into bilateral agreements with foreign Central Authorities as prescribed under the Hague Adoption Convention, wherever necessary;

FUNCTIONS OF AUTHORIZED FOREIGN ADOPTION AGENCY

Any NRI, Overseas Indian or foreigner can approach to the Authorised Foreign Adoption agency or Central authority. Under section 2 (6) of the JJ Act "authorized foreign adoption agency" means a foreign social or child welfare agency that is authorized by the Central Adoption Resource Authority (CARA) on the recommendation of their Central Authority or Government department of that country for sponsoring the application of non-resident Indian or overseas citizen of India or persons of Indian origin or foreign prospective adoptive parents for adoption of a child from India.

The Authorized Foreign Adoption Agency shall perform the following functions, namely:-

1. Register the prospective adoptive parents interested to adopt children from India and to complete their Home Study Report expeditiously;
2. Follow-up with Specialized Adoption Agency for ensuring early adoption after receipt of No Objection Certificate for the adoption from the Authority;
3. Ensure the submission of post-adoption follow-up of the progress of adopted children and to address the cases of disruption, as specified in regulation 19;
4. Arrange get-togethers of children of Indian origin and their adoptive families from time to time with the involvement of the Indian diplomatic mission concerned;
5. Facilitate root search by older adoptees; and

ADOPTION PROCEDURE FOR NON-RESIDENT INDIAN, OVERSEAS CITIZEN OF INDIA AND FOREIGN PROSPECTIVE ADOPTIVE PARENTS**A. Non-Resident Indian to be treated at par with resident Indian⁵**

Non-resident Indian prospective adoptive parents shall be treated at par with Indians living in India in terms of priority for adoption of Indian orphan, abandoned or surrendered children.

B. Registration and Home Study Report for prospective adoptive parents for inter-country adoption:⁶

1. Any Non-Resident Indian, Overseas Citizen of India or foreign prospective adoptive parents, living in a country which is a signatory to the Hague Adoption Convention and wishing to adopt an Indian child, can approach the Authorised Foreign Adoption Agency or the Central Authority concerned, as the case may be, for preparation of their Home Study Report and for their registration in Child Adoption Resource Information and Guidance System
2. In case, there is no Authorised Foreign Adoption Agency or Central Authority in their country of habitual residence, then the prospective adoptive parents shall approach the Government department or Indian diplomatic mission concerned in that country for the purpose.
3. The Authorised Foreign Adoption Agency or Central Authority or the Government department or the Indian diplomatic mission concerned, as the case may be, on ascertaining the eligibility of the prospective adoptive

parents for adopting a child, shall get their Home Study Report completed and register their application in Child Adoption Resource Information and Guidance System in the format along with the required documents as specified in Schedule VI.

4. The Home Study Report and other documents of the prospective adoptive parents, referred to in this Chapter, shall be scrutinized at the Authority in order to determine their eligibility and suitability and be forwarded to the Specialized Adoption Agency where children legally free for adoption are available.
5. The prospective adoptive parents may reserve one of the referred children within ninety-six hours and the profile of the other child shall stand automatically withdrawn.
6. In case the prospective adoptive parents fail to reserve any of the children within ninety-six hours, then the profiles of both the children shall stand automatically withdrawn.
7. Preference of the prospective adoptive parents shall be taken into consideration when sending referrals to them.
8. If the prospective adoptive parents reserve one of the children shown, they shall accept the child by signing the Child Study Report and Medical Examination Report of the child within thirty days from the date of reservation.

9. The Child Study Report, Medical Examination Report and photograph of the child, in original, shall be sent by the Specialized Adoption Agency to the Authorized Foreign Adoption Agency or Central Authority or the Indian diplomatic mission concerned.
10. If the prospective adoptive parents desire to visit the Specialized Adoption Agency to see the child in person, before accepting him for adoption, such visit may be made after their adoption application is approved by the Authority and the prospective adoptive parents may also get the Medical Examination Report of the child reviewed by a medical practitioner of their choice.
11. The Authorized Foreign Adoption Agency shall forward the original documents of the prospective adoptive parents, as specified in Schedule IX, to the Specialised Adoption Agency concerned for their scrutiny.

ROLE OF INDIAN DIPLOMATIC MISSIONS IN INTER-COUNTRY ADOPTION

A diplomatic mission or foreign mission is a group of people from a state or organization present in another state to represent the sending state or organization officially in the receiving or host state. Basic functions of a diplomatic mission include:

- Represent the home country in the host country
- Protect the interests of the home country and its citizens in the host country
- Negotiate with the government of the host country

- Monitor and report on conditions and developments in the commercial, economic, cultural, and scientific life of the host country
- Promote friendly relations between the host country and the home country
- Develop commercial, economic, cultural, and scientific relations between the host country and the home country.
- Issue passports, travel documents, and visas

Rule 40 of the Adoption Regulation 2017 says that Indian diplomatic missions abroad shall have the following role in inter-country adoption of Indian children, namely:-

1. Liaise with Central or public authorities concerned to ensure safeguards of children of Indian origin adopted by Non-Resident Indian, Overseas Citizen of India or foreign parents against neglect, maltreatment, exploitation or abuse;
2. Interact with the authorized foreign adoption agencies and Central Authorities within their jurisdiction and organize or participate in the get-togethers of the adopted children and their parents;
3. Recommend proposals for authorization of foreign adoption agencies for the purpose of sponsoring applications for adoption of Indian children;
4. Issue visa to foreign prospective adoptive parents who wish to see a child in person at a Specialized Adoption Agency in India, before accepting him for adoption, after their adoption application is approved by the Authority, and

also for attending the court proceedings as well as for receiving the child thereafter;

5. Empanel and authorize social workers to complete adoption application formalities including Home Study Report in a foreign country, where there is no Authorized Foreign Adoption Agency or a Government department to deal with adoption;
6. Register the adoption applications of Non-Residence Indian Prospective Adoptive Parents or Overseas Citizen of India in Child Adoption Resource Information and Guidance System along with requisite documents as specified in Schedule VI and upload post-adoption follow-up reports as in regulation 19;
7. The Indian diplomatic mission processing the adoption application, either directly or through the authorized organization, shall send progress report of the child on quarterly basis in the first year and on six monthly basis in the second year, from the date of arrival of the child in the receiving country and in case of disruption of adoption, shall take actions as provided in regulation 19;
8. Contact the Central Authority or other authorities in the receiving countries to ensure safeguards of children of Indian origin adopted by Non-Resident Indian or Overseas Citizen of India or foreign parents and in case of disruption of adoption, a report in this regard shall also be sent to the Authority at the earliest;

9. Render necessary help and facilitate the repatriation of the child in case required, in consultation with the local authorities, adoption agency concerned and the Authority;
10. Facilitate root search by an adoptee of Indian origin, if contacted; and
11. Communicate any report or observation, which it may consider as important and relevant in the matter of inter-country adoptions to the Authority.

CONCLUSION

Adoption is the legal process under which there is a kind of transfer of a child from biological parents to adoptive parents. Under Hindu adoption and maintenance act only Hindus, Sikhs, Jains and Buddhist were eligible to adopt a child but after implementation of Juvenile Justice act even Muslims and Christians are eligible to adopt a child. In case of international adoption there is possibility of misuse of the adoptive child, the adoptive parents might misuse them as a servant or use them for any domicile activities. CARA plays an important role in controlling all these malicious activities. It's responsibility of CARA to find out whether the adoptive parents actually needy or not, CARA also conducts survey to clarify that whether adoptive parents are financially sound to maintain the child or not. In case of Inter country adoption not only CARA but also Indian Diplomatic missions also plays an important to observe and monitor that the child is in safe hands or not and adoption is by the needy parents in the welfare and development of the child.

Web-Sources

1. <https://www.indiaparenting.com/what-is-adoption.html>
2. <https://www.childwelfare.gov/topics/adoption/intro/>

¹ Rule 3 of the Child adoption rule 2017

² Rule 4 of the Child adoption rule 2017

³ Rule 5 of the Child adoption rule 2017

⁴ The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (or Hague Adoption Convention) is an international convention dealing with international adoption, child laundering, and child trafficking in an effort to protect those involved from the corruption, abuses, and exploitation which sometimes accompanies international adoption.

⁵ Rule 14 of the Child adoption rule 2017

⁶ Rule 15 of the Child adoption rule 2017